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In re Application of :
Omer Cure et al :
Serial No. 07/331,091 : DECISION ON PETITION
Filed March 27, 1989 :
For: IMMERSION MEASURING PROBE :
FOR USE IN MOLTEN METALS :

This is a decision on the petitions filed May 11, 1989 requesting that the above-identified application be treated as a continuation application under 37 CFR 1.62 and accorded a filing date of March 27, 1989.

When the application was filed, it included a form requesting a continuation under 37 CFR 1.62 but the proper procedures were not followed for filing a FWC application. The request failed to identify the parent application by serial number and filing date as required by 37 CFR 1.62. On May 3, 1989, Application Branch mailed a Notice of Improper FWC Filing Under 37 CFR 1.62 - No Filing Date Granted due to applicants' failure to comply with the requirements of 37 CFR 1.62.

In response, on May 11, 1989, the present petition was filed. Petitioners state it is believed that upon submission of the foregoing information and payment of the petition fee, the FWC application can be granted a filing date of March 27, 1989.

37 CFR 1.62 states that:

"The filing date of an application filed under this section is the date on which a request is filed for an application under this section including identification of the Serial Number, filing date, and applicant's name of the prior complete application."
(Emphasis added)

Applicants' request for a filing under 37 CFR 1.62 deposited on March 27, 1989 reads as follows:

"This is a request for a file wrapper continuing (FWC) application of the above pending matter in accordance with 37 CFR 1.62."

The request is clearly incomplete. Applicants are responsible for clearly identifying the serial number and filing date of the prior application (see 37 CFR 1.62).

The correct title of the invention of the prior application was identified on the transmittal form deposited on March 27, 1989. Also, the correct serial number was identified elsewhere in the papers deposited on March 27, 1989.

Since it is now clear that applicants intended to file a continuation application under 37 CFR 1.62 of prior application Serial No. 06/780,707, on petition, the papers deposited on March 27, 1989 will be so construed.

The petition is granted.

The preliminary amendment filed March 27, 1989 will be entered in due course.

The application is being returned to Application Branch for further processing with a filing date of March 27, 1989 as a continuation application under 37 CFR 1.62 of prior application Serial No. 06/780,707.


R. Franklin Burnett
Special Assistant to the
Assistant Commissioner for Patents